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September 18, 2015

BY CM/ECF

Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Friedman, et al. v. JPMorgan Chase & Co., et al.*, No. 15 Civ. 05899 (JGK)

Dear Judge Koeltl:

We represent the defendants in the above-referenced action. As Your Honor is aware, defendants moved to dismiss the Second Amended Complaint on September 11. D.E. 70, 71. We now write to inform the Court of a decision issued yesterday by the Middle District of Florida dismissing the related action, *Dusek v. JPMorgan Chase & Co.*, No. 14-cv-184, brought against JPMorgan on behalf of 38 “net winners” in Madoff’s Ponzi scheme. *See id.*, ECF No. 82. The dismissed claims in *Dusek* were premised on the same factual allegations and legal theories asserted in this case, and the named plaintiffs in *Dusek* are members of the putative class in the present case. A copy of the opinion is attached.

The district court in *Dusek* dismissed with prejudice plaintiffs’ “control person” claim under the Securities Exchange Act of 1934, holding that (1) the claim was not timely

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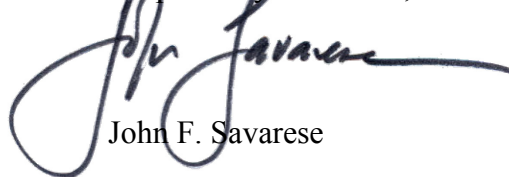
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because it was filed more than five years after Madoff's arrest and thus was outside the statute of repose established in the Exchange Act, (2) plaintiffs failed, as a matter of law, to adequately allege that JPMorgan controlled Madoff's firm or his Ponzi scheme, and (3) as investors who profited from the fraud, plaintiffs had no cognizable damages under the federal securities laws. The court further held that plaintiffs' claim under the federal RICO Act was barred by the PSLRA provision precluding civil RICO claims predicated on allegations of securities fraud. In short, the court relied on the same grounds argued by the defendants in their motion to dismiss the federal claims in this action. *See slip op.* 32-51; D.E. 71, at 6-20.

The district court in *Dusek* also declined to exercise supplemental jurisdiction over plaintiffs' remaining state law claims and accordingly dismissed the action in its entirety. As a result, there is no longer a live action pending in the Middle District of Florida — the venue to which the plaintiffs here are seeking to re-transfer this case. *See* D.E. 66, 67.

Defendants will further address the impact of the *Dusek* decision as appropriate in their opposition to plaintiffs' re-transfer motion and in their reply in further support of their motion to dismiss.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John F. Savarese", with a long, sweeping horizontal stroke extending to the right.

John F. Savarese

Encl.

cc: All counsel of record (by ECF)